IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.15964 of 2010(O&M)

Date of Decision:06.01.2011

D.P.Jangra **.....Petitioner**

Versus

State Information Commission,
Haryana and others **.....Respondents**

CORAM: HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR.

Present: Mr.Subhash Ahuja, Advocate,
for the petitioner.

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MEHINDER SINGH SULLAR, J.(oral)

The matrix of the facts, which needs a necessary mention for a limited purpose of deciding the core controversy involved in the instant writ petition and emanating from the record, is that petitioner-D.P.Jangra was posted as District Food and Supplies Controller, Yamuna Nagar. Shamsher Singh (respondent No.5) son of Kathu Ram sought information under The Right to Information Act, 2005 (hereinafter to be referred as "the Act"), relating to the expenditure, movable and immovable properties of the petitioner, vide application dated 18.01.2010. He has also sought copies of the permissions obtained by the petitioner to purchase/sell the property. The same were not supplied to him by the State Public Information Officer(for short "the SPIO"). Dissatisfied with it, the private respondent filed the first appeal, but the information was not supplied to him as well by the First Appellate Authority(for brevity "the FAA").

2. Aggrieved by the action of the SPIO and the FAA, respondent No.5 filed the second appeal before the State Information Commissioner, Haryana(for brevity "the SIC"). During the course of hearing of the second appeal, the SIC passed the impugned order dated 21.07.2010(Annexure P-4). The operative part

of which is, as under:-

> *"In the hearing today, the appellant and the respondents were present and heard. The appellant submitted that requisite information has not been provided to him by the respondents so far. The respondents submitted that the informations sought by the appellant cannot be furnished since it is covered under Section 8(1)(j) of the RTI Act on the plea that it is invasion on the privacy of individual. The learned Judges of Supreme Court are furnishing details of their movable; immovable assets, so are the Legislators before filing their nomination papers. The Commissioner had ordered official of M.C.F., Faridabad to furnish details of their movable, immovable assets. Likewise, an order has been issued in respect of officials of Haryana State Agricultural Marketing Board. However, still Sh.D.P.Jangra is being extended an opportunity and a personal hearing on 09.08.2010 to make his submissions in case he has any specific reason for not furnishing details of his movable, immovable assets. The next date of hearing is fixed for 09.08.2010 at 11.00 hours."*

3. Not only that, instead of supplying the requisite information, the FAA and the SPIO contended that as per arguments of the petitioner, the information sought by respondent No.5, cannot be furnished, since, the same is covered under Section 8(e)(j) of the Act. However, their plea was negatived and the SIC directed them to supply the information vide impugned order dated 09.08.2010(Annexure P-14). The operative part of which is, as follows:-

> *"Today in the hearing, both the appellant and respondents were present and heard. With the existing levels corruption in our system, we cannot create world class assets/infrastructure for our future generations despite the funds/liquidity at our disposal currently. The appellant had alleged various charges of corruption against Sh.D.P.Jangra who has been DFSC, Yamuna Nagar on several occasions in the hearing before Commission. The corruption in respondent department could be more pronounced due to its interaction with general public and more so with BPL population. We should attempt to reduce if not totally eliminate the source of corruption from out Society. India is at position No.134 on the UN Human Development Index since 1994 despite a 15 times increase in budget allocation over this period for social sector and poverty alleviation programmes by the Government.*

It is hereby directed that the respondent/public authority i.e. The Director Food & Supplies Deptt. could consider obtaining the details of movable; immovable assets of all employees in respondent department/public authority starting from the level of sub inspector in the field offices and details should be accessible to the general public on the web site of respondents/public authority. RTI Act seeks to make those who govern accountable to the governed and also seeks to reduce corruption in our system. It is expected that corruption will be considerably reduced in the system if proposed details of assets of individuals are available to the general public on website as very few officials would like to create benami properties. SPIO is hereby directed to obtain the details of movable, immovable assets of Sh.D.P.Jangra, his wife and family members and furnish the same to the appellant within 25 days of issue of order with copy to the appellant and the Commission in term of appellant's application dated 18.01.2010.

The case will be closed only after receipt of the above information."

4. Neither the FAA, nor the SPIO-respondents, assailed the impugned orders, but the petitioner did not feel satisfied and filed the present writ petition challenging the impugned orders(Annexures P-4 and P-14), invoking the provisions of Articles 226/227 of the Constitution of India.

5. Having heard the learned counsel for the petitioner, having gone through the record and the relevant legal provisions with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition in this regard.

6. Ex facie, the argument of the learned counsel that since the information with regard to movable and immovable properties and expenditure etc. is a personal information of the petitioner, which cannot be supplied and is exempted under Section 8(e)(j) of the Act, so, the impugned orders are liable to be set aside, is not only devoid of merit but misplaced as well.

7. As is evident from the record that the petitioner was working as District Food and Supplies Controller, Yamuna Nagar, at the relevant time. As per conduct Rule 18, every Government employee was required to submit a return of

his assets and liabilities (property statements) in such form, as may be prescribed by the Government, giving the full particulars of his movable and immovable properties, inherited, owned, acquired or held on lease or mortgaged by him or his spouse or any member of his family, either in their own name or in the name of any other person, besides the details of movable property. Respondent No.5 has sought the information relating to the expenditure, movable and immovable properties of the petitioner and permission of the competent authority to acquire the property and nothing (confidential) else.

8. Above being the position on record, now the sole question that arises for determination in this writ petition is whether such informations fall within the exemption clause, as contemplated under Section 8(e)(j) of the Act or not.

9. Having regard to the contention of the learned counsel for the petitioner, to my mind, the indicated informations sought by the private respondent, do not squarely fall within the ambit of exemption clause, as envisaged under Section 8(e)(j) of the Act.

10. At the very outset, the basic purpose, aims and objects of the Act have to be kept into focus, while deciding the present controversy. The Act was enacted in order to ensure smoother and deep access to information and provides an effective framework for effecting the right to information, recognised under Article 19 of the Constitution of India.

11. Section 8 of the Act is as under:-

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,---

(a) *xx* *xx* *xx* *xx*

(b) *xx* *xx* *xx* *xx*

(c) *xx* *xx* *xx* *xx*

(d) *xx* *xx* *xx* *xx*

(e) Information available to a person, in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

(f) *xx* *xx* *xx* *xx*

(g) *xx* *xx* *xx* *xx*

(h) *xx* *xx* *xx* *xx*

(i) *xx* *xx* *xx* *xx*

(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

12. The word "Information" has been defined under Section 2(f) of the Act to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force and word "Record" includes--(i) any document, manuscript and file; (ii) any mi8crofilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device.

13. Section 2(j) of the Act defines, "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--(i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

14. Sequelly, Section 3 of the Act postulates that subject to the provisions of this Act, all citizens shall have the right to information and obligations of public authorities to maintain all its record is listed in Section 4 of

the Act. Every person is entitled to information, as per procedure prescribed under Section 6 of the Act, which will be disposed of by the competent authorities under Section 7 of the Act.

15. Likewise, Proviso to Section 8 of the Act envisaged that the information, which cannot be denied to the Parliament or the State Legislature, shall not be denied to any person.

16. A co-joint reading of the aforesaid provisions would reveal, only that information is exempted, the disclosure of which, has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless the authorities are satisfied that the larger public interest justifies the disclosure of such information. Meaning thereby, as all the essential ingredients of exemption clause are totally lacking, therefore , the petitioner cannot claim its exemption. The information contained in the property statement has direct relationship with the public employment of the petitioner and cannot possibly be termed as unwarranted invasion of his privacy. Therefore, to my mind, the information sought by the respondent with regard to the sanctions, expenditure, movable and immovable properties of the petitioner, cannot possibly be termed to be exempted information, as escalated under Section 8(e)(j) of the Act, particularly when, what is not disputed here is that the petitioner being a public servant was required and submitted his detailed properties statement, as per conduct rules and the authorities under the Act, are (legally) duty bound to supply such information to respondent No.5 in this relevant behalf.

17. Again, the next submission of the learned counsel that as the petitioner was a third-party, therefore, the impugned orders cannot be passed, without affording him an opportunity of hearing, is neither tenable, nor the observations of Gujarat High Court in case **Reliance Industries Limited Vs. Gujarat State Information Commission and others, AIR 2007 Gujarat 203,** are at all applicable to the facts of the present case. In that case, Rasiklal Mardia

filed as many as 55 applications, for getting the following information about the petitioner and its group of companies:-

> *"2.2 Informations demanded by the original applicant i.e. Rasiklal Mardia (in Special Civil Application No.16073 of 2007), are as under:-*
>
> *"(1) You have recommended for sales tax exemption as per Government Policy for Reliance Petrochemicals Ltd. and your department has confirmed that they have complied with terms and conditions of the Govt. as to local employment etc. Please provide complete copy, verification report done to the labourers working there with proof whatever is available with you and whether genuinely local people are employed is verified or not.*
>
> *(2) Any complaint received by you that they have not complied with the local people and false certificate is issued by your office, If yes, copies of all the correspondence and copy of compliance received by you.*
>
> *(3) Year-wise inspection done by your Dept. and confirmation that local people are continuously checked, confirmed their eligibility for sales tax exemption benefits and other benefits given to them for putting up the industry.*
>
> *(4) If they have not complied with the terms and conditions whatever action has been initiated by your Dept. and the recommendations made by your Dept. for action to be taken against the company for not complying with terms and conditions, entire copy of the correspondence and present status.*
>
> *(5) Several people died during the time of construction of Refinery. Status of that and copy confirming how many people died, action initiated by your Dept. and the present status of the cases and copy of the case papers." (Emphasis supplied)*
>
> *Thus, the aforesaid informations were demanded by the original applicant i.e., Rasiklal Mardia.*
>
> *These informations were pertaining to the petitioner-company and its group companies."*

18. On the peculiar facts and circumstances, it was observed in that case that time-bound schedule given under the Act, will not oust a right of hearing, vested in a third-party before imparting the information, the authorities are required to satisfy about the credentials of the applicant and has to pass a speaking

order and the third-party rights have to be protected.

19. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the petitioner in the instant case. The word "Third-Party" has been defined under Section 2(n) of the Act, to mean a person other than the citizen making a request for information and includes a public authority (and not otherwise).

20. It is not a matter of dispute that respondent No.5-Shamsher Singh sought the information from the SPIO and it was the SIC, which directed the SPIO to supply the information, vide impugned speaking orders(Annexures P-4 and P-14). Since, the matter was between respondent No.5, SPIO and FAA, so, the question of providing any opportunity of hearing to the petitioner, did not arise at all, as he cannot possibly be termed to be a third-party, as defined under Section 2 (n) of the Act, in the obtaining circumstances of the case. If the argument of the learned counsel for the petitioner is accepted as such, then no information is permissible, which would certainly nullify the aims and objects of the Act. Therefore, the contrary arguments of the learned counsel for the petitioner "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

21. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

22. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.

January 06, 2011 (**M**EHINDER **S**INGH **S**ULLAR)
seema JUDGE